$~R-10 & 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: January 06, 2015*

\+ **W.P.(C) 1964/2005**

DHARMENDER SINGH ..... Petitioner

Represented by: Mr.Ashish Kumar, Advocate with Mr.R.K.Sharma, Advocate

versus

UOI & ANR. ..... Respondents

Represented by: Mr.Ankur Chhibber, Advocate

W.P.(C) 1965/2005

RAKESH KUMAR ..... Petitioner

Represented by: Mr.Ashish Kumar, Advocate with Mr.R.K.Sharma, Advocate

versus

UOI & ANR. ..... Respondents

Represented by: Mr.Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The petitioners were employed as constables with the Border Security Force '*BSF*' and in the year 2003 were attached with the 32nd Bn. which was deployed at the Indo-Bangladesh Border. The two along with L/Nk. Humeshwar Patangia used to be deployed at the Border Outpost Fatehpur.

2. Secret information was received by the Commandant of the Battalion that the petitioners and L/Nk. Humeshwar Patangia were facilitating illegal

smuggling of cattle across the border from India by taking illegal gratification.

3. The record which has been produced before us at the hearing today would evince that the Commandant took cognizance of the offence report on August 22, 2003 and ordered that Record of Evidence be prepared by Sh.Rakesh Chauhan the 2-IC of the Battalion.

4. The offence report has been prepared as per a prescribed proforma.

5. Pertaining to the offence report contention advanced is that drawn up on a proforma, the same evidences a non-application of mind by the Commandant.

6. The contention is meritless for the reason Rule 43 of the BSF Rules, 1969 make it obligatory that the offence report shall be written in the form set out in Appendix IV to the Rule.

7. Even otherwise, the offence report is required to state the facts alleged against a person subject to the BSF Act, 1969 and the offence constituted by the alleged wrong done. The offence report records the fact that between July 25, 2003 till August 20, 2003 the petitioners and L/Nk. Humeshwar Patangia were posted at Fatehpur BOP of the D Coy of the 32nd Bn. BSF and they took a sum of ₹80,000-85,000/- from a civilian name Saifulla S/o Late Nazidulla R/o Village Kalughat, PS Islampur District Uttar Dinajpur West Bengal, to facilitate illegal smuggling of cattle, thereby committing an offence punishable under Section 31(b) of the BSF Act, 1968.

8. The record would evince that Sh.Rakesh Chauhan 2-IC commenced recording of the evidence on August 29, 2003 and completed the same on September 20, 2003.

9. The record would show that he recorded the statement of SI Surender

Singh PW-1, Safikul Islam PW-2, SI Louis Tiggar PW-3, Soren Burman PW-4, Ct.Arvind PW-6 (there being nobody examined as PW-5) and AC Tarun Gupta PW-7.

10. The record would evince that both petitioners and L/Nk. Humeshwar Patangia were given an opportunity to cross examine the witnesses and as regards the two petitioners they cross examined some witnesses but declined to cross examine a few. The record would reveal that signatures of the petitioners were taken after the deposition of the witnesses was recorded and again after they were given an opportunity to cross examine the witnesses.

11. The record would further reveal that after the witnesses of the department were examined, the petitioners and L/Nk. Humeshwar Patangia were granted an opportunity to make statement in defence. The petitioners made a statement in defence. L/Nk. Humeshwar Patangia declined to make any statement.

12. The record would further reveal that as per the requirement of Rule 51 of the BSF Rules, 1969 the Record of Evidence was placed before the Commandant of the Battalion who directed that the petitioners and L/Nk. Humeshwar Patangia be tried before the Security Force Court and for which he drew up a charge which mirrors the offence report and the same was served upon the petitioners as also L/Nk. Humeshwar Patangia. The charge was drawn up on January 09, 2004. The arraignment took place on January 13, 2004. Petitioners and L/Nk. Humeshwar Patangia pleaded not guilty. The witnesses were examined. The record would show that the petitioners and L/Nk. Humeshwar Patangia were granted an opportunity to cross examine the witnesses and they exercised said right qua some witnesses and declined to cross examine a few. Relevant would it be to note that Safikul

Islam appeared as PW-2 and deposed that he used to pay BSF personnel bribe in sum of ₹200/- to ₹300/- to facilitate illegal smuggling of cattle. He pointed out the petitioners as two BSF personnel to whom he used to give bribe but failed to identify L/Nk. Humeshwar Patangia. Soren Burman appeared as PW-3 spoke in sync with PW-2.

13. Whereas petitioners were found guilty, and for which we find there is sufficient evidence on record, L/Nk. Humeshwar Patangia was found not guilty. Punishment of dismissal from service has been inflicted upon the petitioners. The Court has taken into account the service rendered by the petitioners, the rewards and decorations earned by them as also past penalties.

14. With respect to the trial before the Court the grievance is that the proceedings are sham. It is asserted that no trial took place. It is asserted that everything is cooked up.

15. The basis for the argument is the signatures of the petitioners and L/Nk. Humeshwar Patangia not being taken after the witnesses were examined and the petitioners and L/Nk. Humeshwar Patangia given an opportunity to cross examine the witnesses.

16. There has to be a presumption raised that official acts have been performed as required by law. The negligence by the Presiding Officer of the Court in not obtaining signatures of the petitioners and L/Nk. Humeshwar Patangia after witnesses deposed and after the three were granted an opportunity to cross examine the witnesses does not require the inference to be drawn that the proceedings were sham.

17. Why should the Presiding Officer of the Court draw up sham proceedings? We see no reason why, particularly when no mala-fides have

been alleged against the Presiding Officer of the Court.

18. That apart, to satisfy our judicial conscious, we have gone through the testimony of the witnesses examined at the trial and have also perused their testimony during Record of Evidence proceedings. We have seen the line of cross examination adopted to test the veracity of the witnesses at the two stages. There is near parity. This is some indicative proof that proceedings did take place as recorded in the Court proceedings. The witnesses were examined in presence of the petitioners. The petitioners were granted an opportunity to cross examine the witnesses.

19. It is lastly urged that it is a case of no evidence.

20. We do not agree.

21. The testimony of Safikul Islam and Soren Burman clearly implicates the petitioners.

22. A feeble attempt has been made to urge that the penalty levied is disproportionate.

23. Found guilty of facilitating smuggling and receiving illegal gratification for the same, would warrant the penalty of dismissal to be levied and it is trite that a Court would not interfere with a penalty unless it shocks the judicial conscious.

24. No other point is urged.

25. The writ petitions are dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 06, 2015/*mamta*